

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

MERCK EPROVA AG and MERCK KGAA

V.  
PROTHERA, INC.

SUMMONS IN A CIVIL ACTION  
**08 cv 00035**

CASE NUMBER:

**Judge Berman**

TO: (Name and address of Defendant)

ProThera, Inc.  
10439 Double R Blvd.  
Reno, Nevada 89521

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Robert E. Hanlon, Esq.  
Alston & Bird, LLP  
90 Park Avenue  
New York, New York 10016

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**J. MICHAEL McMAHON**

CLERK

DATE

(By) DEPUTY CLERK

**JAN 03 2008**

### Waiver of Service of Summons

TO: Robert E. Hanlon, Esq.  
Alston & Bird LLP

I acknowledge receipt of your request that I waive service of a summons in the action of Merck Eprova AG and Merck KGaA v. ProThera, Inc., which is case number 08 CV 00035 in the United States District Court for the Southern District of New York. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that ProThera, Inc. be served with judicial process in the manner provided by Rule 4.

ProThera, Inc. will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against ProThera, Inc. if an answer or motion under Rule 12 is not served upon you within 60 days after January 3, 2008, or within 90 days after that date if the request was sent outside the United States.

January 28, 2008  
Date

Signature

Printed/typed name: Joshua King

{ as \_\_\_\_\_ }  
{ of \_\_\_\_\_ }

### Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant who, after being notified of an action and asked to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or even its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against the defendant. By waiving service, a defendant is allowed more time to answer than if the summons has been actually served when the request for waiver of service was received.